

Agenda

Item #4



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

October 19, 2011

Hon. Jeffrey L. Timberlake
284 Ricker Road
Turner, ME 04282

Notice of Proposed Finding of Violation

Dear Rep. Timberlake:

Thank you for your cooperation with the audit of your 2010 campaign and for your return of \$10 to the Maine Clean Election Fund. This letter is to inform you that the Commission will be meeting on Friday, October 28. At the meeting, the Commission's auditor will be providing an update to the Commissioners on the audits completed to date.

At the meeting, the Commission's auditor will recommend to the Commissioners that they find that the campaign violated 21-A M.R.S.A. § 1125(12) by not accurately reporting your expenditures of Maine Clean Election Act funds. This is in connection with Finding #2 of the final audit report, in which our auditor determined that the campaign did not accurately report the payments to Spectrum Marketing, Turner Publishing, and Bangor Letter Shop. The Commission staff will not be recommending any financial penalty for the violation.

If you wish to respond in any way to the proposed finding of violation, you are welcome to attend the meeting or submit anything in writing you would like. No response is required. The meeting will be at 9:00 a.m. at the Commission's office at 45 Memorial Circle.

Thank you again for your cooperation during the audit. If you have any questions, please call me at 287-4179.

Sincerely,

A handwritten signature in black ink, appearing to read "Jonathan Wayne".

Jonathan Wayne
Executive Director



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September 15, 2011
Audit Report No. 2010-HR042
Candidate: Jeffrey L. Timberlake
House District 96

Background

Representative Jeffrey L. Timberlake was a candidate for election to the Maine House of Representatives, District 96, in the 2010 general election. Rep. Timberlake was certified by the Commission as a Maine Clean Election Act (MCEA) candidate on April 23, 2010. MCEA candidates are required under the Act to submit reports of their contributions received, expenditures, outstanding campaign debt, and equipment purchases and dispositions for specified periods during the election cycle.

Audit Scope

The auditor examined selected contributions made to the campaign, and certain expenditures made during the following reporting periods:

- Seed Money (11/05/2008 through 4/19/2010)
- 11 Day Pre-Primary (4/20/2010 through 5/25/2010)
- 42 Day Post-Primary (5/26/2010 through 7/13/2010)
- 42 Day Pre-General (7/14/2010 through 9/14/2010)
- 11 Day Pre-General (9/15/2010 through 10/19/2010)
- 42 Day Post-General (10/21/2010 through 12/7/2010)

The transactions examined were recorded in the campaign's accounting and banking records. The audit's purpose was to determine if the identified contributions and expenditures (1) were properly approved by the candidate or his authorized representative; (2) were adequately documented as evidenced by original vendor invoices and cancelled checks or other acceptable third party disbursement documentation; (3) were properly reported to the Commission; and (4) complied in all material respects with the requirements of the Maine Clean Election Act and the Commission's rules.

Audit Findings and Recommendations

Finding No. 1 – Misreporting Seed Money Expenditures

Rep. Timberlake reported \$500 in Seed Money contributions, and \$500 in Seed Money expenditures. Since the candidate was in an opposed primary contest, he received the full MCEA allotment of \$1,504 for the primary. The audit disclosed, however, that the Timberlake Campaign did not make the reported Seed Money expenditure until May 24, 2010, 31 days after the candidate was certified for MCEA participation. Rep. Timberlake informed the auditor that he had reported the expenditure as made on April 19, 2010 (within the qualifying period) on the advice of the Commission's Candidate Registrar assigned to his campaign. The campaign in fact incurred the obligation to the vendor (Spectrum Marketing) on April 19th, but as stated above, did not make the payment until May 24th.

The reporting error was that the transaction was listed on Schedule B (Expenditures) when it should actually have been reported on Schedule D (funds obligated but not paid). Although payment to the vendor occurred in May, the candidate did not spend more than he reported; funds used to pay the vendor were constructively from

the Seed Money period. The effect was that the candidate received and spent \$500 more in MCEA funds than was allowable.

Discussion – the auditor believes that either (a) as Rep. Timberlake contends, he was given incorrect direction by a Commission staff member, or (b) he misunderstood the directions he was given. Whatever the case, the auditor was unable to verify the information that was communicated to Rep. Timberlake by the Candidate Registrar as that individual is no longer employed by the Commission. The auditor is therefore inclined to accept Rep. Timberlake's explanation.

Standard - 21-A M.R.S.A. §1125 (2-A) (C) states that "Upon requesting certification, a participating candidate shall file a report of all seed money contributions and expenditures. If the candidate is certified, any unspent seed money will be deducted from the amount distributed to the candidate ..."

Recommendation – the Commission staff believe that Rep. Timberlake may have received incorrect information from the staff concerning procedures for reporting Seed Money expenditures. Accordingly, the staff recommends that the Commission not find Rep. Timberlake in violation of 21-A M.R.S.A. § 1125(2-A) (C), and further recommends that no penalty be assessed.

Finding No. 2 – Misreported Campaign Expenditures

The Timberlake Campaign reported a payment of \$225 to Turner Publishing in the 42 Day Post-Primary reporting period. The auditor was unable to locate an invoice or a payment document in this amount. According to Rep. Timberlake, the amount of \$225 was his understanding of costs being invoiced by Turner. An advertising agreement between Turner Publishing and the candidate dated 5/27/2010 stipulated an amount payable of \$215; however, the recorded amount payable was crossed out and a substitute amount of \$186 was entered. Subsequently, the Timberlake Campaign made a \$186 payment to Turner Publishing on August 1, 2010. The transaction discussed above involved two reporting errors: first, a payment of \$225 was listed on the 42 Day Post-Primary Report when no payment in that amount was made in that reporting period. Secondly, a payment of \$186 was made but not reported in the 42 Day Pre-General reporting period.

Standard – 21-A M.R.S.A. §1125 (12) states in part that "participating and certified candidates shall report ... all campaign expenditures, obligations and related activities to the commission according to procedures developed by the commission".

Recommendations – the staff recommends that the Commission find Rep. Timberlake in violation of 21-A M.R.S.A. §1125 (12) but also recommends that no penalty be assessed.

Administrative Issue

In view of the errors discussed in Finding No. 2 above, the auditor examined all invoices and all payment documents supporting multiple transactions with single vendors that were reported by the candidate. The results are summarized below.

VENDOR	TOTAL REPORTED	TOTAL PAID	VARIANCE
Spectrum Marketing	\$2,326.82	\$2,365.82	(\$39.00)
Turner Publishing	\$2,348.00	\$2,309.00	\$39.00
Bangor Letter Shop	\$670.00	\$660.00	\$10.00
Adjustment			<u>\$10.00</u>

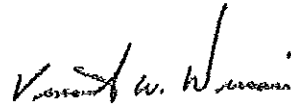
In the auditor's opinion, the variances referred to above are relatively minor in nature and do not rise to the level of a violation. The candidate should amend his reports to accurately reflect payments to the listed vendors, and also refund \$10 to the Maine Clean Election Fund.

Candidate's Comments on Findings and Recommendations Contained in this Report

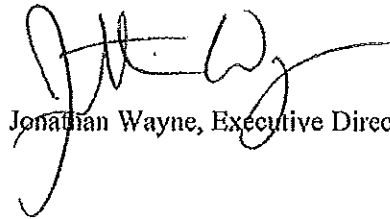
The Commission staff discussed the findings with Rep. Timberlake and he did not dispute the facts as presented. Rep. Timberlake agreed to repay the Commission the \$10 over-payment discussed above.

Respectfully submitted,

Approved:



Vincent W. Dinan, Auditor



Jonathan Wayne, Executive Director